

Before the
Administrative Hearing Commission
State of Missouri

STATE BOARD OF NURSING,)	
)	
Petitioner,)	
)	
vs.)	No. 13-1548 BN
)	
MISTY CHEESMAN,)	
)	
Respondent.)	

DECISION

Misty Cheesman is subject to discipline for initiating and maintaining an inappropriate relationship with a patient.

Procedure

On August 30, 2013, the State Board of Nursing (“the Board”) filed a complaint seeking to discipline Cheesman. On October 16, 2013, Cheesman filed an answer.

We held a hearing on April 28, 2014. Ian Hauptli represented the Board. Cheesman appeared by Counsel David F. Barrett and in person. The case became ready for our decision on October 3, 2014, the date the last written argument was due.

Commissioner Karen A. Winn, having read the full record including all the evidence, renders the decision of the Commission. Section 536.080.2, RSMo 2000¹; *Angelos v. State Bd. of Regis’n for the Healing Arts*, 90 S.W.3d 189 (Mo. App. S.D. 2002).

¹ Statutory references are to the Revised Statutes of Missouri, RSMo Supp. 2013, unless otherwise noted.

Findings of Fact

1. At all times relevant to this case, Cheesman was licensed by the Board as a registered professional nurse (“RN”). At the time of hearing, Cheesman’s license was not current and active, and she was practicing in North Carolina.
2. Cheesman has been an RN since February of 2001.
3. During much of her career, Cheesman has worked in the field of oncology nursing.
4. In October of 2011, Cheesman went to work as an RN at St. Vincent’s Behavioral Health (St. Vincent’s), an inpatient psychiatric hospital affiliated with SSM DePaul Health Center in Bridgeton, Missouri.
5. Cheesman worked at St. Vincent’s for just over four months.
6. As part of her training and orientation to St. Vincent’s, Cheesman was instructed on the maintenance of appropriate professional boundaries between staff and patients.
7. Luann Connor was the team leader of the adult behavioral unit at St. Vincent’s and Cheesman’s direct manager.
8. At the time of hearing, Connor had been an RN for 28 years and had worked as a psychiatric nurse at St. Vincent’s for two and a half years. She received the same training as Cheesman on professional boundaries.
9. Connor received information from colleagues of Cheesman that Cheesman would sometimes clock out from working and stay at St. Vincent’s to socialize with patients and that Cheesman shared details of her own mental health history with patients, which Connor regarded as inappropriate.
10. Connor once directly observed Cheesman being inappropriately flirtatious with a patient and counseled her about the behavior.

11. In February of 2012, Connor was alerted by LD, the mother of BD, a former St. Vincent's patient, that Cheesman had initiated an inappropriate relationship with her son and was maintaining it by telephone.

12. In addition to calling BD, Cheesman also made phone calls to LD in which Cheesman offered to provide private care to BD in the home LD shared with her son, invited herself to attend their private Super Bowl party, and said she wanted to purchase jewelry for LD.

13. BD obtained Cheesman's personal phone number. Cheesman explained that BD obtained the number by correctly guessing it in a game she devised in which she made the object to figure out the correct number.

14. Cheesman told BD that she could lose her job if her superiors at St. Vincent's discovered their personal relationship.

15. After Cheesman's behavior was investigated by St. Vincent's, BD blamed himself for causing Cheesman's employment problems.

16. Cheesman believes she was motivated by a desire to fulfill a "calling from God"² but recognized that her failure to maintain professional boundaries with BD was in contravention of St. Vincent's policies.

17. As a result of her contacts with LD and BD, Cheesman was terminated from St. Vincent's on February 8, 2012.

Evidence

At the hearing, the parties stipulated that the investigative report produced and placed into evidence by the Board should be sealed in order to maintain the privacy of BD and his family members assisting in the Board's investigation. We ordered the record be sealed.

² Tr. 57.

Conclusions of Law

We have jurisdiction to hear this case. Sections 335.066.2 and 621.045. The Board bears the burden of proving that Cheesman's license is subject to discipline by a preponderance of the evidence. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-30 (Mo. App. W.D. 2012)(dental licensing board demonstrates "cause" to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that "the fact to be proved [is] more probable than not." *Id.* at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)). This Commission must judge the credibility of witnesses, and we have the discretion to believe all, part, or none of the testimony of any witness. *Dorman v. State Bd. of Registration for the Healing Arts*, 62 S.W.3d 446, 455 (Mo. App., W.D., 2001). Even when credibility is a factor, a Commissioner may decide the case after reading the full record but without hearing the evidence. *Angelos*, 90 S.W.3d at 192-94.

The Board alleges that there is cause for discipline under § 335.066:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by sections 335.011 to 335.096;

* * *

(12) Violation of any professional trust or confidence[.]

Professional Standards – Subdivision (5)

The Board alleges that Cheesman's conduct constituted incompetence, misconduct, and gross negligence in her functions as a nurse. Incompetency is a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability, to perform in an occupation. Section 1.020(9); *Tendai v. Missouri State Bd. of Reg'n for the Healing Arts*, 161 S.W.3d 358, 369 (Mo. banc 2005). Incompetence is not established by isolated acts; rather, it is a "state of being." *Albanna v. State Bd. of Reg'n for the Healing Arts*, 293 S.W.3d 423 (Mo. banc 2009). Misconduct means "the willful doing of an act with a wrongful intention[;] intentional wrongdoing." *Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm'n Nov. 15, 1985) at 125, *aff'd*, 744 S.W.2d 524 (Mo. App. E.D. 1988). Gross negligence is an act or course of conduct constituting such a gross deviation from the standard of care a reasonable professional would exercise under the circumstances that it demonstrates a conscious indifference to a professional duty. *Duncan*, 744 S.W.2d at 533, quoted in *Kerwin*, 375 S.W.3d at 226.

Cheesman argues that the record here is insufficient to find cause for discipline because the Board produced no expert testimony as to the standard of care for psychiatric nurses. As to gross negligence, we agree. *See Tendai*, 161 S.W.3d at 368 (to demonstrate that a physician has committed gross negligence, expert testimony is needed to establish a gross deviation from the standard of care). But as to incompetence and misconduct, we disagree.

We find that Cheesman committed misconduct by taking affirmative steps to pursue a personal relationship with BD, even trying to enlist the help of his mother to do so. Cheesman commenced these steps while BD was still one of her patients at St. Vincent's and continued after he was discharged. We find her claim that she inadvertently provided her telephone number to BD not credible. Cheesman admitted that she was trained on maintaining appropriate

boundaries at St. Vincent's, and her supervisor counseled her on boundaries when she thought Cheesman had behaved inappropriately with another patient. Nonetheless, Cheesman crossed the boundary lines in her relationship with BD and his mother because she formed her own opinion that it would be therapeutic to do so. Although her intentions were benevolent, her actions were still misconduct because they were contrary to St. Vincent's policy and training as well as her supervisor's instruction, and she committed them willfully.

Likewise, Cheesman displayed an inability or unwillingness to function properly as a psychiatric nurse, a fact that she admitted in her testimony when she referred to her tenure at St. Vincent's as a failed experiment.³ Her inappropriate behavior with BD did not consist of a single instance, but a course of conduct. And she behaved inappropriately with at least one other patient at St. Vincent's, as evidenced by her supervisor's counseling her on that point.

Cheesman argues that the Board has relied on hearsay in making its case. The Board's investigative report is, indeed, filled with hearsay, to which Cheesman timely objected. But the evidence we rely on in making our findings of fact and conclusions of law in this case consists largely of Cheesman's own admissions that she made at the hearing and to her supervisor, who also testified under oath at the hearing.

We find Chessman is subject to discipline under § 335.066.2(5) for misconduct and incompetence.

Professional Trust – Subdivision (12)

The phrase "professional trust or confidence" is not defined in Chapter 335. Nor has the phrase been defined in the case law. Absent a statutory definition, the plain meaning of words used in a statute, as found in the dictionary, is typically relied on. *E&B Granite, Inc. v. Dir. of Revenue*, 331 S.W.3d 314, 318 (Mo. banc 2011). The dictionary definition of "professional" is

³ Tr. 47.

of, relating to, or characteristic of a profession or calling...[;]...
engaged in one of the learned professions or in an occupation
requiring a high level of training and proficiency...[;]
and]...characterized or conforming to the technical or ethical
standards of a profession or occupation....

WEBSTER'S THIRD NEW INT'L DICTIONARY UNABRIDGED 1811 (1986). "Trust" is

assured reliance on some person or thing [;] a confident
dependence on the character, ability, strength, or truth of someone
or something...[.]

Id. at 2456. "Confidence" is a synonym for "trust." *Id.* at 475 and 2456. Trust "implies an
assured attitude toward another which may rest on blended evidence of experience and more
subjective grounds such as knowledge, affection, admiration, respect, or reverence[.]" *Id.* at
2456. Confidence "may indicate a feeling of sureness about another that is based on experience
and evidence without strong effect of the subjective[.]" *Id.*

Therefore, we define professional trust or confidence to mean reliance on the special
knowledge and skills that professional licensure evidences.

BD and his family and the managers at St. Vincent's all relied on Cheesman to act
professionally and to maintain appropriate boundaries with her patients. When she was caught
doing the opposite, Cheesman admitted to blatantly disregarding the training and expectations of
her employer, which we believe St. Vincent's had a right to expect of her. Cheesman violated
the professional trust and confidence of her employer, colleagues and patients. There is cause to
discipline her license under § 335.066.2(12).

Summary

Cheesman is subject to discipline under § 335.066.2(5) and (12).

SO ORDERED on December 31, 2014.

// Karen A. Winn
KAREN A. WINN
Commissioner